

Neutral Citation No: [2024] NIKB 93

Ref: HUM12638

*Judgment: approved by the court for handing down
(subject to editorial corrections)**

Delivered: 08/11/2024

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

KING'S BENCH DIVISION

Between:

**PATRICK FRIZZELL AS PERSONAL REPRESENTATIVE OF THE ESTATE OF
BRIAN FRIZZELL (DECEASED)**

Plaintiff

and

**(1) THE CHIEF CONSTABLE OF THE POLICE SERVICE OF NORTHERN
IRELAND**

(2) THE MINISTRY OF DEFENCE

(3) THE SECRETARY OF STATE FOR NORTHERN IRELAND

(4) ALAN OLIVER

(5) ANTHONY MCNEILL

(6) THOMAS HARPER

Defendants

AND

Between:

**MARGARET LUNDY ON BEHALF OF THE ESTATE OF ALAN LUNDY
(DECEASED)**

Plaintiff

and

**(1) THE CHIEF CONSTABLE OF THE POLICE SERVICE OF NORTHERN
IRELAND**

(2) THE MINISTRY OF DEFENCE

Defendants

**SECOND OPEN JUDGMENT ON CLOSED MATERIAL PROCEDURE
APPLICATIONS**

**Gregory Berry KC, Ian Skelt KC and Joseph Kennedy (instructed by SASO) as Special
Advocates for the Plaintiffs**

**Tony McGleenan KC, Fiona Fee KC and Joseph McEvoy (instructed by the Crown
Solicitor's Office) for the PSNI, MOD and Secretary of State**

HUMPHREYS J

Introduction

[1] In a judgment delivered on 9 October 2023 ([2023] NIKB 97) I set out the background to these actions and the closed material procedure applications made by the defendants. This ruling should be read in conjunction with that decision.

[2] Annexed to that judgment was a gist of sensitive material which related to the disclosure provided by two of the defendants, the Chief Constable of the PSNI and the Secretary of State.

[3] Further files of sensitive material were furnished to the court and the Special Advocates by the MOD, and the process of examining those documents and preparing a gist was undertaken in a series of closed hearings.

[4] I should emphasise that in the preparation of these gists, the court is making no findings of fact. The end product of the procedure prescribed by section 8 of the Justice and Security Act 2013, and Order 126 of the Rules of the Court of Judicature is a summary of material which would otherwise not be disclosed by reason of the damage to the interests of national security. The veracity and reliability of the material in question will be the subject of a hearing later this month during the course of which the court will hear evidence and analyse the documents in issue.

[5] Having considered the material, and the submissions of the parties, I am satisfied that disclosure of the MOD material would cause damage to national security. The reasons for this are identical to those which prevailed in the section 8 applications brought by the PSNI and Secretary of State.

[6] I therefore make directions under Order 126 rule 13(7) and (10):

- (i) Giving permission to the defendant to withhold the sensitive material; and
- (ii) Directing it to serve a summary of that material on the plaintiffs and their legal representatives.

[7] In line with the procedure laid down under Order 126 rule 13(4), a schedule was produced setting out the competing versions of the summary or gist of the sensitive material prepared by each party and the reasons for the areas of dispute.

[8] In essence, the parties only disagreed on the issue of the relevance of material which related to the efforts made by Brian Nelson to import weapons into Northern Ireland in 1985. In light of the allegations made in the pleadings, and by applying the common law test for relevance in discovery set out in *Peruvian Guano*, I

determined that such material would, absent any section 8 application, be required to be disclosed to the plaintiffs. It therefore falls to be summarised within the gist.

[9] The MOD has indicated that it is content with the disclosure of the gist to the plaintiffs in these actions and I therefore set it out in full at Annex A to this judgment.

ANNEX A

GIST DEALING WITH MOD DOCUMENTATION RE VZ 58 WEAPON IMPORTATION

Background

1. The MOD has conducted searches for all materials relevant to the importation of arms from South Africa, the importation of arms in or about January 1988 and the subsequent recovery of weapons.
2. This gist concerns events (a) in 1985 in respect of an aborted attempt by the UDA to import arms from South Africa, the information about which is derived for the most part from contact notes between the FRU and Brian Nelson and (b) the importation of weapons in or about January 1988.

Gist

3. In or about May 1985, Brian Nelson was requested by the UDA to visit South Africa to facilitate the importation of arms to Northern Ireland. Contact Forms indicate that Nelson kept the FRU fully informed of all matters relating to the proposed importation. Whilst there were some concerns that Nelson might be exposed if the arms were intercepted, it was considered the circle of knowledge would be large enough to divert suspicion from Nelson. Furthermore, random custom inspection could assist.
4. On returning, from South Africa, the FRU were confident that Nelson remained ideally placed to keep them informed on the arms deal. Nelson identified to the FRU his main contact in South Africa. Documentation confirms it was considered that maintaining Nelson's involvement in the UDA arms deal would hopefully lead to the capture of the arms shipment. By September 1985 information suggested the UDA were having problems obtaining the money to finance the arms deal which ultimately did not proceed.
5. Brian Nelson was not involved in the arms importation of 1987/1988.
6. In January 1988, surveillance by MOD of a number of individuals suspected to be involved in the arms importation resulted in no significant observations.
7. On 8 January 1988, surveillance by other security force personnel tracked vehicles believed to be on route to collect a portion of the weapons. The vehicles were unsighted for a period of time with two Granadas having last been observed leaving Tandragee SW on the B3. The vehicles were subsequently sighted and stopped at a VCP on the Mahon Road, Portadown and found to contain 61 x AK47; 30 x 9mm Browning pistols; 150 grenades and

ammunition. It is believed the vehicles picked up the weapons from a hide when unsighted.

8. Post seizure of the weapons on 8/9 January 1988 surveillance took place but failed to produce positive results.
9. Between 14 November 1988 and 18 November 1988, searches were conducted at addresses in Loughgilly, Richhill, Hamiltonsbawn, Markethill, Portadown and Armagh. A number of model 58P assault rifles, Browning pistols, RPG-7 launcher and rockets and grenades were found. The serial numbers of the assault rifles and pistols were close to the serial numbers of the arms seized on the Mahon Road, Portadown on the 8/9 January 1988.